UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE GENERAL COUNSEL
POLLUTION CONTROL TEAM

ROOM 3351 SOUTH BUILDING
1400 INDEPENDENCE AVENUE, S.W.
WASHINGTON, D.C. 20250-1412

Telephone: 202-720-8041
Facsimile: 202-720-6039
E-mail: Gary.Fremerman@usda.gov

FAX COVER SHEET

DATE: January 4, 2007

FROM: Gary M. Fremerman

TO: Alex Chen
Assistant Regional Counsel

OFFICE: EPA Region 7

FAX #: 913-551-7925

NUMBER OF PAGES SENT (INCLUDING COVER SHEET): 13

MESSAGE: Alex - Attached is USDA's response to the RCRA administrative complaint that we are submitting to facilitate the ADR process. I emailed to you earlier today the documents for Tab 1. Contrary to what I had previously been told, the GIPSA laboratory did not exceed the threshold for acute hazardous waste that would make it a large quantity generator.

Gary Fremerman

PRIVILEGED & CONFIDENTIAL;
PREPARED FOR SETTLEMENT DISCUSSIONS

USDA Response to EPA Region 7 RCRA Complaint

USDA appreciates the opportunity to participate in this ADR process with EPA and to seek a fair and equitable resolution of EPA Region 7's administrative complaint regarding the Federal Grain Inspection Service laboratory (the "laboratory") in Kansas City, Missouri. The laboratory is operated by the Technical Services Division of USDA's Grain Inspection, Packers & Stockyards Administration ("GIPSA").

Overall, as was noted during the December 15, 2006 ADR call, USDA believes that the complaint resulted from a fundamental misunderstanding as to the quantity of "acute" hazardous waste generated by the laboratory. USDA submits that the laboratory is clearly a RCRA "small quantity generator," and that its prior hazardous waste management activities were carried out responsibly, in good faith, and in substantial compliance with applicable RCRA requirements.

The GIPSA laboratory is a "small laboratory" as defined by EPA's Environmental Management Guide for Small Laboratories. It has no full-time position in environmental management. Prior to the Region 7 RCRA compliance evaluation inspection in November 2005, the laboratory had never before been inspected by either EPA or the Missouri DNR.

It also is important to note that the Region 7 complaint does not involve any allegations of releases or spills or improper disposal of hazardous wastes, and there have been no allegations of harm to human health or the environment. Moreover, laboratory personnel have been completely forthright and cooperative with EPA, and have acted in good faith at all times.

I. Background

GIPSA plays a vital role in the domestic and international purchase and sale of grain and related farm products. Among other things, it establishes official grading standards and testing procedures for grains, oilseeds, rice, lentils, dry peas, and a variety of edible beans. These standards enable buyers and sellers to communicate and verify the type and quality of these commodities. GIPSA also oversees the official grain, rice and commodity inspection and weighing system – a unique public-private partnership including Federal, State, and private agencies – that provides official inspection, testing and weighing services to the domestic and export trade.

In addition to its support of these activities, GIPSA's laboratory provides an important service to EPA through the Pesticide Data Program. EPA is required under Federal law to monitor the pesticide content of various food products, with an emphasis on estimating the dietary exposure of children to pesticide residues. The GIPSA laboratory analyzes large

numbers of food samples each year for EPA (through a subcontract with the Agricultural Marketing Service). EPA supplies the laboratory with most of the pesticides that it uses to perform its analyses under this program.

In performing this analytical testing work for the Pesticide Data Program, the laboratory generates a relatively small amount of RCRA hazardous waste. Most of this hazardous waste consists of various solutions of pesticide chemicals and solvents; the laboratory routinely dissolves very minute amounts of pesticide products in one or more solvents in order to carry out the necessary analytical procedures.[1]

II. The GIPSA Laboratory's "Generator Status"

The crux of Region 7's complaint is that the GIPSA laboratory is a RCRA "large quantity generator" – and therefore subject to various stringent hazardous waste management requirements – because it generated, and also accumulated onsite, excessive amounts of "acute" hazardous waste. The wastes at issue are largely from the pesticide products that the laboratory received from EPA as part of the Pesticide Data Program.

Under the RCRA regulations, if a facility generates more than one kilogram ("kg") during a calendar month of "acute" hazardous waste, or accumulates onsite at any one time more than one kg of "acute" hazardous waste, then it is deemed to be a "large quantity generator" and thus subject to several relatively stringent hazardous waste management requirements. See 40 C.F.R. Part 262. (One kg is equivalent to 2.2 pounds.) If a facility generates or accumulates less than this amount of "acute" hazardous waste, then it is considered to be a RCRA "small quantity generator" that is subject to less stringent requirements.[2]

---

[1] According to GIPSA laboratory personnel, the typical pesticide-solvent solution used at the laboratory consists of approximately one part pesticide to 8,000 parts solvent. In fact, a typical solution used by the laboratory contains such small quantities of pesticide that, in solid form, they would be roughly the size of just a few granules of sugar. They also note that the solvent concentrations in these solutions are actually more toxic than are the pesticide concentrations.

[2] In addition to these quantities of "acute" hazardous waste, a facility in Missouri is deemed to be a RCRA "large quantity generator" if it generates 1,000 kg or more of non-"acute" hazardous waste during a calendar month or accumulates that amount onsite. If the facility generates or accumulates between 100 and 1,000 kg of such non-"acute" hazardous waste, it is considered to be a "small quantity generator." EPA has not alleged that the GIPSA laboratory is a RCRA "large quantity generator" based on its monthly generation or onsite accumulation of non-"acute" hazardous waste.

As a practical matter, the distinction between "acute" and non-"acute" hazardous waste can be quite confusing and counter-intuitive – particularly in light of the specific analytical processes performed by the GIPSA laboratory. During the December 15 call, GIPSA acknowledged that its laboratory personnel were not previously cognizant of the regulatory distinction between the "acute" pesticide waste that the laboratory generates and its other, nearly identical, pesticide waste that is hazardous but not "acute." Moreover, based on the records from the inspection, it appears that even the EPA inspector did not fully comprehend this distinction. (During the December 15 call, Region 7 also acknowledged the often-confusing nature of this distinction.)

It is important to recognize that most of the hazardous wastes generated by the laboratory consist of relatively small solutions composed of one or more pesticide chemicals and solvents. These pesticide-solvent solutions are quite similar to one another in terms of their composition and function. Yet, some of these solutions are deemed to be "acute" under RCRA, while others are not, based on a number of seemingly arbitrary distinctions in the RCRA regulations.

According to EPA's regulations, if a pesticide chemical that is listed at 40 C.F.R. § 261.33(e) is the "sole active ingredient" in the discarded solution, the discarded material is considered to be an "acute" hazardous waste for purposes of determining the facility's "generator status." However, if the discarded waste material has more than one "active ingredient," it is not considered to be "acute" hazardous waste. For example, if the pesticide chemical aldicarb, which is listed at 40 C.F.R. § 261.33(e), is dissolved in a solvent such as methanol, the resulting solution is considered "acute" waste when discarded unused. By contrast, if this very same aldicarb chemical plus one other listed chemical (or any other chemical that is considered to be an "active ingredient") are dissolved in the identical methanol solvent, the resulting solution would not be deemed to be "acute" hazardous waste when discarded.

In addition to the "sole active ingredient" criterion, EPA's RCRA regulations regarding "acute" hazardous waste make another confusing distinction. Once a pesticide chemical listed at 40 C.F.R.§ 261.33(e) is "used for its intended purpose," the discarded waste is no longer considered to be "acute" – even if the pesticide is the sole active ingredient in the solution. Yet, if the exact same chemical is discarded without having been "used for its intended purpose," then the discarded waste is considered to be "acute." See 54 Fed. Reg. 31,335, 31,336 (July 28, 1989). The regulations do not explain the meaning of "used for its intended purpose."

A. The GIPSA Laboratory Facility is Currently a RCRA "Small Quantity Generator"

GIPSA personnel have recently documented that the laboratory does not generate more than one kg of "acute" hazardous waste during a calendar month or accumulate that amount onsite. Moreover, the facility does not generate on a monthly basis or accumulate 1,000 kg or more of non-"acute" hazardous waste. Therefore, the laboratory is clearly a RCRA "small quantity generator."

Following receipt of the Region 7 complaint, GIPSA consulted with USDA environmental experts, re-reviewed its laboratory waste-generation processes, and thoroughly analyzed all relevant information contained in the comprehensive pesticide databases that the laboratory maintains. Based on that review, laboratory personnel determined the specific amounts of "acute" hazardous waste that the laboratory generated each calendar month from January 2001 until November 2006. In addition, using the facility's waste manifests, laboratory personnel were also able to determine the total amount of "acute" hazardous waste that was accumulated onsite during this period. This information, summarized in Tab 1, clearly demonstrates that although the laboratory does generate a small amount of "acute" hazardous waste, it does not come close to the quantities that would make it a RCRA "large quantity generator."[3]

B. The GIPSA Laboratory also was a RCRA "Small Quantity Generator" For the Entire Period Covered By The Complaint

As indicated by the monthly waste generation summary in Tab 1, the GIPSA facility is highly confident that it never generated more than one kg of "acute" hazardous waste during any calendar month during the period covered by the complaint. Moreover, GIPSA submits that it never accumulated onsite greater than one kg of "acute" hazardous waste during this time period, nor did it generate or accumulate more than 1,000 kg of non-"acute" hazardous waste.

---

[3] As indicated in Tab 1, the greatest quantity of "acute" hazardous waste that the GIPSA laboratory generated in a single calendar month during 2006 occurred in May, when the laboratory generated only 0.320 kg of such waste. Similarly, the largest quantity of "acute" hazardous waste that accumulated onsite at any one time during the past year was 0.335 kg (in April). These numbers are well below the allowable quantities for "small quantity generators."

In addition, the summary in Tab 1 clearly shows that the laboratory does not generate during a calendar month nor accumulate onsite such quantities of non-"acute" hazardous waste as to be considered a "large quantity generator" on that basis.

However, during their painstaking review and compilation of the information in Tab 1, GIPSA personnel discovered additional factual information that could potentially be viewed as affecting possible regulatory interpretations as to the quantity of "acute" hazardous waste that the facility accumulated onsite during the period from May 2004 through May 2005. Although USDA firmly believes that this information does not affect the laboratory's "generator status," USDA is providing this information to EPA at this time in the interest of full and complete disclosure.

GIPSA personnel discovered from their review of relevant laboratory log books that on 12 different occasions during this time period, laboratory personnel appear to have inadvertently commingled small quantities of a discarded chemical listed at 40 C.F.R. § 261.33(e) with larger quantities of waste solutions consisting of multiple pesticides listed at 40 C.F.R. § 261.33(e) and solvent. Specifically, for one of the laboratory's analytical methods, individual 100 milliliter ("mL") solutions were prepared as a laboratory "feedstock." Each solution was prepared by dissolving 10 milligrams ("mg") of a single pesticide chemical in 100 mL of methanol. For 12 of these solutions, the pesticide constituent was listed at 40 C.F.R. § 261.33(e). Each 100-mL solution was used to fill a separate 20-mL vial with approximately 18 mL of solution; the 18-mL portion was further utilized in subsequent analyses. The remaining 82 mL of solution was subsequently poured in liquid form into a waste drum used for storing other discarded multi-pesticide solutions; these other multi-pesticide solutions were deemed to be listed (but not acute") hazardous waste based on the specific solvents involved.

GIPSA has determined that these incidents occurred during May 2004, June 2004, August 2004 and May 2005. The total quantity of accumulated liquid waste that was involved in this commingling was unknown, but likely was in excess of one kg.[4]

However, even if the total amount of accumulated multi-pesticide waste that was commingled with these single-pesticide wastes exceeded one kg, USDA submits that these isolated incidents would not affect GIPSA's status as a "small quantity generator" during the 2004-2005 time period.[5] As noted above, a discarded pesticide chemical listed at 40 C.F.R. § 261.33(e) is not considered to be "acute" hazardous waste if it has been "used for its intended purpose" prior to being discarded. However, EPA has never given the regulated community fair notice in the Federal Register as to what this phrase means. USDA submits that it is reasonable to believe that these 12 single-pesticide chemicals had in fact been "used for their intended

---

[4]In contrast to these 12 incidents, the disposal of other single-pesticide hazardous waste at the laboratory was normally handled in a different manner. This waste was stored in small glass containers which were then sealed in sturdy plastic bags before being placed in a designated waste drum. EPA Region 7's inspector observed this disposal technique during the November 2005 site inspection.

[5]As indicated in Tab 1, these 82-mL waste solutions were included by GIPSA in its monthly generation and accumulation calculations for "P-listed" hazardous wastes.

purpose" – i.e., they were first formulated from a "dry" product into solution, and then further used as available "feedstock" for the laboratory's analytical processes. Consequently, USDA submits that these 12 82-mL solutions should reasonably be viewed as non-"acute" hazardous waste based on their having been used prior to being discarded.

However, even if the Presiding Officer at an administrative hearing found these specific discarded solutions to be "acute" hazardous waste, USDA submits that neither the RCRA "mixture rule" nor the "derived-from rule" rule would operate to make the accumulated liquid wastes that were commingled with these single-pesticide waste solutions "acute" hazardous waste for purposes of the laboratory's "generator status."[6] Significantly, the "mixture" rule applies, on its face, only to mixtures of listed (or characteristic) waste and non-hazardous waste, and operates to make such "mixed" material hazardous (as opposed to non-hazardous); the "derived-from" rule similarly operates to make the "derived" material hazardous (as opposed to non-hazardous). See, e.g., 57 Fed. Reg. at 7,628 (March 3, 1992). Consequently, they should not be viewed as altering a facility's "generator status" in instances involving the combination of one type of listed hazardous waste with another type of listed hazardous waste.

Moreover, even if the "mixture" and "derived-from" rules could potentially be applicable in similar instances involving "large quantity generators," EPA has specifically noted that ". . . the mixture rule does not apply to mixtures of small quantity generator wastes and solid wastes . . . . EPA views the derived from rule as similarly inapplicable." (Emphasis added.)[7] Given the clear evidence that the GIPSA laboratory is a "small quantity generator," USDA believes that EPA's explicit regulatory guidance should be deemed to be dispositive on this issue.

Furthermore, it is important to recognize that the policies underlying the "mixture" and "derived-from" rules are not at issue in this instance. Both of these rules were intended to prevent generators from evading regulatory requirements that would otherwise apply to them.

---

[6]The relevant part of the "mixture rule" provides that a solid waste will be considered to be a hazardous waste if it is mixed with a listed waste. 40 C.F.R. § 261.3(a)(2)(iv). The "derived-from rule" states that any solid waste generated from the treatment, storage or disposal of a listed hazardous waste is a hazardous waste. 40 C.F.R. § 261.3(c)(2)(i).

[7]See 53 Fed. Reg. 31,138, 31,149 (Aug. 17, 1988). It should be noted that when EPA made this pronouncement, it parenthetically referenced 40 C.F.R. § 261.5(h), which pertains to "conditionally exempt small quantity generators" ("CESQG"). However, in its Federal Register guidance, EPA did not limit the applicability of this principle to only CESQGs. Moreover, EPA did not indicate that this "exemption" might be inapplicable if the mixture was characteristically hazardous (by contrast, 40 C.F.R. § 261.5(h) does include such a limitation). Thus, USDA submits that it is reasonable and appropriate (and also an issue of "fair notice") to "take EPA's own language at its face," and to construe EPA's Federal Register guidance regarding the "mixture" and "derived-from" rules as being applicable to RCRA "small quantity generators" such as the GIPSA laboratory.

See 57 Fed. Reg. at 7,628. In this instance, however, GIPSA never had any economic or other incentive to mix its "acute" hazardous waste with other hazardous waste. Given its low monthly "acute" hazardous waste generation and accumulation rates, these few instances of commingling provided absolutely no benefit to GIPSA of any kind.

Finally, it also is important to point out that these commingling events posed no risk of harm to human health or the environment. As noted above, the liquid solutions that were in the drums into which the single-pesticide solution was poured consisted of multiple-pesticide chemicals dissolved in solvents. In other words, this waste material was merely commingled with what was essentially the very same type of waste material.[8] Furthermore, all of the drummed material continued to be managed as "listed" hazardous waste.

Given these considerations, USDA submits that GIPSA's handling of these few quantities of 82-ml waste should have no bearing on its status as a RCRA "small quantity generator."[9]

III. The Remaining Allegations of the Complaint

GIPSA's response to the remaining items in the complaint are as follows.

A. Illegal storage of hazardous waste in excess of 90 days (par. 14-18): This requirement is not applicable because it applies only to RCRA "large quantity generators." GIPSA acknowledges that it did not meet the accumulation time limit for "small quantity generators" in every instance.

B. Labeling and dating (par. 20-23): With respect to paragraph 21, GIPSA states that the "hazardous waste" label had been affixed but had fallen off. GIPSA does not dispute the allegations in paragraph 23 regarding the accumulation start dates. These items were promptly corrected after the inspection.

C. Weekly inspections of hazardous waste containers (par. 23-26): GIPSA states that weekly inspections were in fact carried out. Laboratory employees went into the hazardous waste storage building at least once a week, and often more frequently. They were under clear instructions to "eyeball" the containers and to promptly report any leaks or deterioration in the containers, and any other potential concerns relating to these containers, to the responsible supervisor.

---

[8] In fact, according to GIPSA laboratory personnel, the concentration of pesticides in the discarded 82-mL solutions was actually ten times less than in other solutions typically prepared in the laboratory; the concentration for each 82-mL solution was 0.1 mg/mL or 1 part pesticide to 80,000 parts solvent. Thus, the concentrations of solvent waste (which is not categorized as "acute") in these discarded solutions were clearly more toxic than were the concentrations of pesticide.

[9] At most, these incidents should be viewed as a relatively minor matter of hazardous waste management that has since been corrected.

D. Emergency device (par. 27-30): GIPSA believes that it substantially complied with the requirements of 40 C.F.R. § 265.34. GIPSA notes that all but one of the individuals who have been authorized to enter the hazardous waste storage building carried with them cell phones when they entered the building. Moreover, 40 C.F.R. § 265.34(a) specifically provides that access to such alarm or communication device may be "either directly or through visual or voice contact with another employee." GIPSA states that laboratory personnel who entered the hazardous waste storage area were routinely in either visual or voice contact with other employees who had direct access to alarms and other communication devices. Nonetheless, as an added precaution, an emergency air horn was placed in this hazardous waste storage building after the inspection.

E. Arrangements with local authorities (par. 31-33): GIPSA believes that it substantially complied with the requirements of 40 C.F.R. § 265.37. It is important to note that this regulation expressly authorizes the facility owner/operator to make such arrangements as are "appropriate" given the type of waste handled and the potential need for the services of the organizations listed. In this instance, GIPSA had fully familiarized the City fire department with the nature of the facility's activities and the specific kinds of chemicals that were used. Moreover, GIPSA laboratory personnel had been told by representatives of the Federal Protective Service ("FPS") that the FPS, rather than the City police department, was the "first line" responder for this facility (because it is operated by a Federal agency). These FPS representatives indicated that they had previously reached an understanding with the police on this issue. Given this information, GIPSA had focused its efforts on familiarizing FPS with its operations, rather than the local police. Following the inspection, however, GIPSA made follow-up contacts with the police, the area hospital, and emergency response officials.

F. Personnel training (par. 34-36): 40 C.F.R. § 265.16(d) is inapplicable because this regulation only applies to RCRA "large quantity generators." The comparable provision applicable to "small quantity generators," and therefore the laboratory, is 40 C.F.R. § 262.34(d)(5)(iii), which requires that facility employees be "thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies . . . ." GIPSA states that it complied with this requirement.

G. Contingency plan (par. 37-43): 40 C.F.R. Part 265 Subpart D is inapplicable because this Subpart applies to RCRA "large quantity generators", not to "small quantity generators". GIPSA states that it was in substantial compliance with the emergency and safety requirements applicable to "small quantity generators" in accordance with the standards in 40 C.F.R. §§ 262.34(d)(4) and (5), 40 C.F.R. 265 Subpart C, and the applicable OSHA regulations.

H. Satellite accumulation containers (par. 44-52): With respect to paragraph 47 of the complaint, GIPSA concedes that the eight small 4-liter containers (each roughly the size of a jug of apple cider with a screw-on cap) were not closed every single time the laboratory scientists temporarily left the room. GIPSA also does not dispute the items in paragraph 48.

Although the laboratory did not achieve 100 percent compliance in every instance cited by the complaint, USDA submits that these violations were relatively minor in scope, and that overall the laboratory did a reasonably good job of managing its hazardous waste.

The laboratory also wishes to make clear that it is now fully in compliance with all hazardous waste management requirements.

IV. Budget Impact

Any penalty assessed by EPA in this instance would have to be paid by GIPSA's Technical Services Division ("TSD") out of its appropriated funds. GIPSA management has indicated that, apart from salary and benefit costs, TSD's total operating budget for this year is approximately $900,000. Consequently, the proposed penalty of $320,580 would constitute approximately 35 percent of TSD's total operating budget. Such a result would catastrophically impact GIPSA's ability to perform its mission.

Even a much reduced penalty would require a commensurate reduction in some aspect of the laboratory's operations. USDA requests that Region 7 fully consider the adverse impacts on GIPSA's ability to perform its mission that would result from any proposed penalty.

V. Compliance Assistance

On November 30, 2006, Region 7 carried out a "Compliance Assistance Visit" at the USDA Food Safety & Inspection Service laboratory in St. Louis, Missouri. It is our understanding that "Compliance Assistance" is a form of cooperative "outreach" offered by Region 7 which is primarily designed to help regulated facilities achieve RCRA regulatory compliance. A copy of the "Notice of Findings" that EPA left with the FSIS laboratory is attached at Tab 2.

USDA requests that Region 7 consider taking a similar "compliance assistance" approach with regard to the GIPSA laboratory, especially considering that the GIPSA laboratory is a "small laboratory" as defined by EPA and it has never previously been inspected by either EPA or the DNR.

* * * *

Given the circumstances noted above, USDA would appreciate the opportunity to explore with EPA the possibility of resolving this matter without a financial penalty.

TAB 1

TAB 2

Compliance Assistance Visit
Notice of Findings

Facility Name: USDA-FSIS Midwestern Laboratory
Facility Address: 4300 Goodfellow Blvd. Bldg 105-D
St. Louis MO 63120
Facility ID#: MO6123790002
Inspector: David M. Whiting Date: 11/30/06

A Compliance Assistance Visit of the above facility has just been completed. The purpose of the visit was to assist the facility in regulatory compliance with their applicable environmental laws and regulations. The following potential violations were identified during the inspection:

Citation	Description of Problem
40 CFR 262.34 (d)	Incomplete emergency information posted by phone.
40 CFR 279.22 (c)	Used oil containers should be marked 'used oil' rather than 'waste oil'.

This notice is provided to call your attention to those areas of noncompliance at the earliest possible time. This notice does not constitute a compliance order and may not be a complete listing of all violations which may be identified as a result of this visit.

You are hereby requested to submit in writing within 30 days of receipt of this notice a description of all corrective actions taken and/or a schedule for completion of necessary corrective actions. The response should be submitted to:

Kris Boschen Phone: (913) 551-7027
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, KS 66101

The undersigned person hereby acknowledges that he/she has received a copy of this Notice and has read same.

Printed Name: Kathleen D. Holland
Signature: Kathleen D. Holland
Title: Laboratory Staff Officer
Date: 11/30/2006

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the ADR Matter of	)	
	)	
U.S. Department of Agriculture,	)	**Docket No. RCRA-07-2006-0276**
Grain Inspection, Packers & Stockyards	)	
Administration, Federal Grain Inspection	)	
Service,	)	
Respondent	)	

REPORT RECOMMENDING SIXTY-DAY EXTENSION OF ALTERNATIVE DISPUTE RESOLUTION

The undersigned recommends a sixty-day extension of Alternative Dispute Resolution in this matter, from January 15, 2007, to March 16, 2007. An extension of ADR is warranted given the complexity of this case.

Carl C. Charneski
Administrative Law Judge

Susan L. Biro
Chief Administrative Law Judge

Issued: January 23, 2007
Washington, D.C.

In the ADR Matter of *United States Department of Agriculture, Grain Inspection, Packers & Stockyards Administration, Federal Grain Inspection Service*, Respondent.
Docket No. RCRA-07-2006-0276

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Report Recommending Sixty-Day Extension of Alternative Dispute Resolution**, dated January 23, 2007, was sent in the following manner to the addressees listed below.

Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Kathy Robinson
Regional Hearing Clerk
U.S. EPA, Region VII
901 North 5th Street
Kansas City, KS 66101

Copy by Pouch Mail to:

Alex Chen, Esq.
Assistant Regional Counsel
U.S. EPA, Region VII
901 North 5th Street
Kansas City, KS 66101

Copy by Regular Mail to:

Gary M. Fremerman, Esq.
U.S. Dept. of Agriculture, Office of Gen. Counsel
Conservation and Environment Division, Pollution Control Team
Room 3531, South Building
1400 Independence Ave., SW
Washington, DC 20250-1412

Dated: January 24, 2007
Washington, DC